

Administrative Rule Review – ARR18-142
Legislative Service Office

AGENCY Department of Environmental Quality – Land Quality Division

DATE SUBMITTED: February 22, 2019

SUBJECT: Land Quality - Noncoal - Chapter 6 - Self-bonding Program (Financial Assurance); Chapter 12 - Noncoal Letters of Credit

NATURE OF RULES: Legislative, Procedural

STATUTORY AUTHORITY: W.S. 35-11-403(a)(ii); 35-11-417(d) and (g).

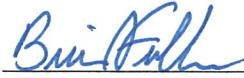
DETERMINATION OF PROCEDURAL COMPLIANCE BASED UPON INFORMATION SUBMITTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY – LAND QUALITY DIVISION TO LSO: Apparently complete to date. Notice of the proposed adoption of new rules was provided by LSO as required by W.S. 28-9-103(d). LSO has received no comments to date.

SUMMARY OF RULES: The Land Quality Division of the Department of Environmental Quality and the Environmental Quality Council is amending its self-bonding rules and rules on letters of credit for bonding of non-coal projects. The Department is, among other things, making the following changes:

- Eliminating the use of financial data to determine if an applicant qualifies for a self-bond. Instead, qualification for self-bonding is based on credit ratings issued by nationally recognized credit-rating services.
- Capping the amount of self-bonds based on the credit rating of the ultimate parent entity and the operator.
- Authorizing the use of real property as a collateral bond instrument, so long as the land is part of the permit area in Wyoming, the Department has a perfected, first-lien interest, and the land is not disturbed by mining while the land is a security. This is in response to 2018 Wyo. Session Laws, Chapter 102, Section 1.
- Eliminating the ability of a non-parent guarantor and subsidiary to guarantee a self-bond to better assure that the Department can collect the full value of the reclamation cost in the event of bankruptcy and forfeiture.
- Repealing the chapter of rules (Chapter 12) addressing letters of credit and transferring them to Chapter 6, which provides rules on financial assurance.
- Amending rules on letters of credit to clarify that only irrevocable letters of credit are acceptable and that standby letters are not accepted.
- Eliminating the use of personal property as collateral and collateralized self-bonds.

FINDINGS: The rules appear to be within the scope of statutory authority and legislative intent. Compliance with federal law has not been determined, as it is assumed that the Attorney General has provided that review.

STAFF RECOMMENDATION: That the rules be placed on the Consent List and be approved by the Council as the Department and Council submitted them.

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Brian Fuller
Staff Attorney

A handwritten signature in blue ink, appearing to read "Josh Anderson", positioned above a horizontal line.

Josh Anderson
Senior Staff Attorney